T.A.M. ABDUL AZIZ & CO. v. SHAMSUDEEN MOHAMED JOHN.

[Court of Appeal (Murray-Aynsley, C.J., Brown and Storr, JJ.) March 19, 1951]

[Singapore — Civil Appeal No. 11 of 1950]

Landlord and Tenant — Control of Rent Ordinance, 1947, s. 14(1)(f)(ii) — Recovery of possession — Premises required by Landlord for own occupation — Hardship — "Greater hardship" — Burden of proof.

This was an appeal against the Order of Evans, J. giving possession of the premises to the respondent-plaintiff (landlord) and suspending the operation of the order for one year. The plaintiff who was the landlord of the premises claimed possession on the ground that he required the premises for his own use.

Held, that (1) under section 14(1)(f)(ii) of the Control of Rent Ordinance, 1947 the burden of proof is on a tenant to show that greater hardship would be caused by granting an order for recovery of possession than by refusing it; and (2) that where there is evidence on which the finding of the trial Judge can be supported a higher Court will not disturb that finding.

Robinson v. **Donovan**[1] followed.

Coplans v. **King**[2] applied.

C. H. Smith for the appellants (tenants) — The fact that the learned trial judge suspended the order for possession for one year indicates that an order for possession resulted in greater hardship being caused to the tenants. The respondent had not proved that he reasonably required the premises for occupation. The learned trial judge should have considered whether it was reasonable to make an order for possession.

J. K. Gale for the respondent (landlord) — An existing balance of hardship may be changed by the suspension of the operation of an order for possession (**Wheeler** v. **Evans**[3]) and a finding as to where the balance of hardship lies is a finding of fact (**Coplans** v. **King**[2]). The burden of establishing a balance of hardship for the purposes of the proviso to section 14(1)(f)(ii) of the Ordinance rests on a tenant (**Robinson** v. **Donovan**[1]). The expression "reasonably requires" in section (14)(1)(f) means that a landlord must be claiming possession **bona fide** and on grounds which are not capricious (**Booth** v. **Clive**[4]). It is not for the Court to consider whether it is reasonable to make the order claimed. On this point section 14(1)(f) differs from section 14(1)(b) and (m) and from Rent Restriction legislation in the United Kingdom, which contains an overriding proviso that the Court must always consider whether it is reasonable to make an order.

Cases referred to:—

(1) *Robinson v. Donovan* (1946) 2 All E.R. 731.

(2) *Coplans v. King* (1947) 2 All E.R. 393.

(3) *Wheeler v. Evans* (1947) 2 All E.R. 740.

(4) *Booth v. Clive* 138 E.R. 327.

APPEAL from the judgment of Cox-Evans, J.

C. H. Smith for the appellants-defendants.

J. K. Gale for the respondent-plaintiff.

Cur. Adv. Vult.

Murray-Aynsley, C.J.: — This appeal concerned premises in Arab Street which belong to the respondent. Both the parties are Indians engaged in the textile trade and it is common ground that it is eminently desirable for persons so engaged to have premises in the street which is the centre of the Indian textile trade in this city. On the evidence there could be no question but that the respondent reasonably required the premises.

The substantial question before the Court, here and below, was the application of the greater hardship clause under section 14(1)(f)(ii) of the Control of Rent Ordinance (No. 25 of 1947).

The learned Judge who heard the case decided that the respondent had not satisfied him that the granting of the order would cause greater hardship than the refusing. We consider that there were grounds on which he could come to this conclusion. The learned Judge was right in considering that the respondent had to show greater hardship (*Robinson v. Donovan*[1]). The English case of *Coplans v. King*[2] shows that where there is evidence on which the finding of the trial Judge can be supported higher Courts will not disturb this finding. The appeal should, therefore, be dismissed with costs.

Brown, J.: — I agree.

Storr, J.: — I agree.

Appeal dismissed.

B. T. HASSAN v. G. A. SCULLY.

[Orig. Civ. Juris. (Jobling, J.) June 8, 1951]

[Penang — Civil Suit No. 134 of 1950]

Landlord and Tenant — Premises occupied by a son of the deceased tenant — "Member of his family" — Construction of — Control of Rent Ordinance, 1948.

On 12th September, 1949 the plaintiff purchased the premises which were then let to Dr. G. A. Scully, the father of the defendant on a monthly tenancy. The plaintiff immediately gave the tenant notice to quit so that he became a statutory tenant. Dr. Scully died on the 5th February, 1950 on which date his son the defendant was living in the premises and had been so living for the last 30 years. The defendant continues to occupy the premises and tendered the monthly rent to the plaintiff but this was refused on the ground that the tenancy had been determined by the death of the tenant. The defendant claimed that he is a member of the tenant's family within the meaning of section 13(1)(i) of the Control of Rent Ordinance, 1948 and the definition of "member of his family" in section 2, and therefore no order for recovery of the premises could be made.

Held, that the proper construction of section 13(1)(i) read with the definition of "member of his family" in section 2 of the Control of Rent Ordinance, 1948 is that no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or

given when the premises are occupied by any of the persons specified in section 2 as members of the tenant's family and that this restriction is not affected by the death of the tenant.

CIVIL SUIT.

T. E. Conaghan for the plaintiff.

C. O. Lim for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Jobling, J.: —The plaintiff claims possession of premises at 66, Cantonment Road, Penang and alleges that the defendant is a trespasser therein.

The facts are not in dispute.

On 12th September, 1949 the plaintiff purchased the premises which were then let to Dr. G. A. Scully, the father of the defendant on a monthly tenancy. The plaintiff immediately gave the tenant notice to quit so that he became a statutory tenant. Dr. Scully died on the 5th February, 1950 on which date his son the defendant was living in the premises and had been so living for the last 30 years. The defendant continued to occupy the premises and tendered the monthly rent to the plaintiff but this was refused on the ground that the tenancy had been determined by the death of the tenant. The defendant claims that he is a member of the tenant's family within the meaning of section 13(1)*(i)* of the Control of Rent Ordinance, 1948 and the definition of "member of his family" in section 2, and therefore no order for recovery of the premises can be made.

Section 13(1) of the Control of Rent Ordinance, 1948 provides that no order or judgment for recovery of premises comprised in a tenancy shall be made or given except in certain specified circumstances one of which is :—

"where the tenant or any member of his family is not in occupation of the premises or any part thereof"

and in section 2 "member of his family" is defined as follows :—

" 'member of his family' means:
(i) the husband or widower; or
(ii) the wife or widow; or
(iii) the father or mother; or
(iv) a son or daughter either of whom is over 21 years of age;

and where the tenancy has not been determined according to law includes a legal personal representative."

Mr. Conaghan contended that this provision cannot be applied here as "tenant" is defined in section 2 as the tenant of the premises in respect of which a tenancy exists and that since the tenancy ceased to exist when Dr. Scully, Senior died there is now no tenant of the premises.

The point in issue has apparently not been decided before in Malaya and reference to the Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 in force in England on which the local Ordinance is based shows that "tenant" is there defined to include any person deriving title under the original tenant (Woodfall's Landlord & Tenant, 24th edition, page 1247) and the judicial decisions on the English Act are therefore of no assistance. Under the English Act there is no doubt that the tenancy continues for the benefit of a tenant's heirs after his death. Under the local Ordinance the use of the words "widow" and "widower" in paragraphs (i) and (ii) of the definition of "member of his family" clearly indicates that the legislature intended the tenancy to continue after the death of the tenant where the widow or widower is the member of the family who remains in occupation.

But Mr. Conaghan has contended that paragraphs (i), (ii), (iii) and (iv) of the definition of "member of his family" must each be considered separately and that any intention that the tenancy should continue which may be disclosed by paragraphs (i) and (ii) cannot be read into the words of paragraphs (iii) and (iv).

I think however that it is clear that the definition must be read as a whole and the fact that it is divided into paragraphs does not mean that the paragraphs must be read disjunctively. The intention of the legislature that the tenancy should continue after the death of the tenant is made clear in the first part of the definition by the use of the words "widow" and "widower" and in the latter part by the reference to a legal personal representative. The words used in paragraphs (iii) and (iv) are consistent with this intention and I have no doubt that had the legislature wished to express a different intention in connection with these two paragraphs it would have used specific words to do so.

In my view the proper construction of section 13(1)(i) read with the definition of "member of his family" in section 2 is that no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or given where the premises are occupied by any of the persons specified in section 2 as members of the tenant's family and that this restriction is not affected by the death of the tenant.

The plaintiff's claim therefore fails and is dismissed with costs.

Claim dismisssed with costs.